

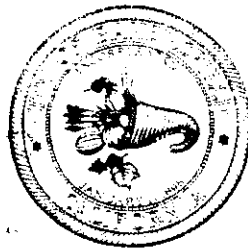
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August 17, 1999

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EX PARTE OR LATE FILED

**Chairman William Kennard**  
**FEDERAL COMMUNICATIONS COMMISSION**  
445 12<sup>th</sup> Street SW  
Washington, DC 20554

Re: Cases: WT 99-217; CC 96-98

Dear Chairman Kennard:

We understand the Federal Communications Commission is proposing to adopt rules which will allow any telephone company to place antennas on building roofs and allow any cable or telephone company to extend their wires to any tenant of any building. We understand these rules would preempt building codes, zoning codes, safety and environmental laws as well as private restrictions (deeds, CC&Rs, Homeowner Association restrictions, et al). The Federal Communications Commission is apparently concerned that municipalities "regulate the entry" of cellular phone companies into the communication business by the management of their rights-of-way. Apparently, claims have been made by telephone companies that local governments engage in right-of-way management practices that are unreasonable, anti-competitive and contrary to federal law. The City of Bakersfield would like to comment upon these new rules and the claims by the telephone and cable companies.

The City of Bakersfield believes that it is important that the Federal Communication Commission continue to recognize the importance of private property. The roof or other outside surfaces of a building are not part of any right-of-way traditionally granted to telephone and cable companies. The public rights-of-way are generally restricted to the street and sidewalk areas and not the building areas of a lot. In most cases, building is not allowed upon any rights-of-way where public utilities would be laid or otherwise used. To allow the placement of antennas and wires upon building roofs or other parts of the building structure, without the permission of the landlord, would violate basic private property rights. In addition, the placement of these antennas and wires onto building structures raises significant liability issues. If the antenna were to fail and cause damage to the building, or personal injury, who would pay for this failure? If the antenna or the wire were to cause significant personal injuries, or a death, the landlord and other private property owners would be pulled into lawsuits and may be found liable for the placement of these instrumentalities. In addition, the placement of these antennas and wires may have significant effects upon the aesthetics of the building and the neighborhood.

Other issues will arise concerning damage to the wires or the antennas. If vandals damage the antennas, or the wires, would the landlord have any responsibility to the cable or telephone company? Wires placed into public utility easements are normally underground or placed upon telephone poles which are difficult for children or vandals to reach. Placement upon roofs, or along the sides of buildings, may expose the antennas or the wires to damage from third parties.

Aesthetics should also play a role in determining where antennas and wires could be placed. No city, or private landowner, desires the aesthetics of a neighborhood to be destroyed by multiple antennas or numerous exposed wires being run helter skelter across the landscape. In the early days of telephones, the streets of large metropolitan areas became a forest of telephone poles with a literal canopy of wires running in every direction around the city. We do not wish to repeat the mistakes of the early 1900's with this new technology.

All the above problems can be avoided if the Federal Communications Commission simply allows local zoning laws to restrict the placement of the wires and antennas in locations which would be dangerous or unsightly.

Zoning laws are matters of local concern which protect and promote the public health, safety and welfare, insure compatible uses, preserve property values and the unique character of our communities. By allowing cities to restrict the numbers, types, location, and size of antennas placed on buildings cities can continue to achieve legitimate public health, safety and welfare goals. Zoning laws should not unduly restrict any entrant into the cable or telephone arena. To date, zoning laws have not unnecessarily impeded technology, the development of our economy, or otherwise placed undue strains on interstate commerce. There is really no basis to conclude that this new technology is having problems on a massive scale with local government. The City of Bakersfield believes telephone and cable provider's complaints about rights-of-way management are overblown. The cable companies and telephone companies are powerful entities with enough cash and legal expertise to fight any local regulation they believed was unduly restrictive. To the best of my knowledge, few cases have been filed against any local entities which allege that local zoning laws are unduly restrictive and resulting in damage to some type of interstate commerce or technological development.

The City of Bakersfield does not believe local zoning laws should be overridden with nationwide rules which unduly favor the cable and telephone companies to the detriment of municipalities. Municipalities must respond to the voter's concerns about public health, safety and welfare issues. Such concerns are legitimate and have been addressed by local communities for decades. The advent of a new technology is no reason to sweep aside years of local agency concern and efforts at protecting the public health, safety and welfare.

If national rules are to be implemented, the City requests these rules recognize the paramount importance of private property rights, and the local municipalities' concern for public health, safety and welfare as well as aesthetics, and liability issues that arise because of the placement of antennas, wires and other instruments of technology. The antennas and wires that will be placed will have significant local impacts. The ability of local entities to regulate these impacts is an important element of federalism. The Federal Communications Commission should not act to destroy the ability of local entities to govern local concerns.

Finally, we suggest that federal, state and local tax burdens upon cable and telephone companies are not excessive. The profit reports from any of these entities will clearly show they are not suffering from over taxation from any source.

For these reasons, please reject the proposed rules and take no action on rights-of-way or taxes. If action must be taken please follow the guidelines we have set forth in this letter and allow municipalities to continue their control over public health, safety, welfare and aesthetic issues.

Very truly yours,

  
ALAN D. DANIEL  
Assistant City Attorney

ADD:dlr

cc: Honorable Mayor and Councilmembers

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